

OFFICE OF THE GOVERNOR

DON SIEGELMAN
GOVERNOR



STATE OF ALABAMA

ALABAMA DEPARTMENT OF ECONOMIC
AND COMMUNITY AFFAIRS

ANNE A. PAYNE
DIRECTOR

MEMORANDUM

TO: Safe Dams Advisory Group

FROM: Trey Glenn
Division Director, Office of Water Resources

DATE: December 12, 2002

SUBJECT: Meeting Notice

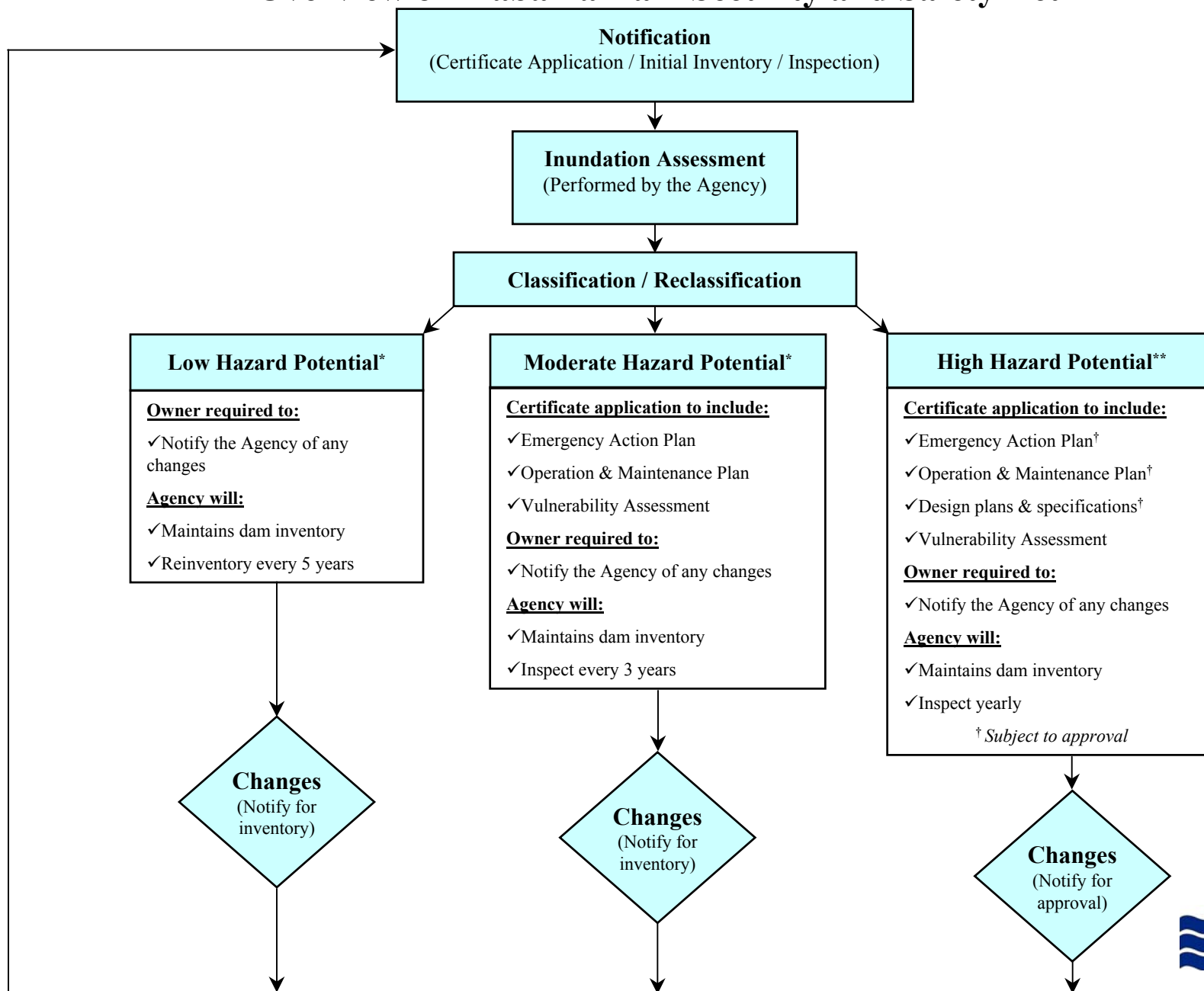
There will be a meeting of the Safe Dams Advisory Group on Thursday, December 19, 2002, at 9:30 am in Room 720 of the Alabama Center for Commerce. Parking is available in the Hull Street parking deck. The code for the month of December is 827*.

OTG:fkt

Enclosures: Flow Chart Description of the Program
Draft Language

Overview of Alabama Dam Security and Safety Act

Draft



*Agency does not regulate design & construction for Low Hazard Potential Dams or Moderate Hazard Potential Dams

**Agency approves design & construction for High Hazard Potential Dams

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ALABAMA
DAM SECURITY AND SAFETY ACT

ALABAMA DAM SECURITY AND SAFETY ACT -DRAFT

1

AN ACT

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3 To provide for the inspection and Certification of Dams; to
4 provide a short title; to state the purpose of this Act; to
5 define the term "Dam"; to define certain other terms
6 associated with safe dams; to provide that no action for
7 damages shall be brought against the State or any employee of
8 the State by reason of any action taken or not taken by
9 employees of the State pursuant to this Act; to authorize the
10 promulgation of Rules and Regulations; to provide that it
11 shall be unlawful to Own, Alter, Abandon, Breach, Construct,
12 Operate or Remove a Dam except in accordance with this Act
13 and the Rules and Regulations, orders, and Certificates
14 established pursuant thereto; to require a Certificate to
15 Operate or Construct a Dam; to provide a procedure to apply
16 for and obtain a Certificate; to exempt certain Dams from the
17 certification requirements of this Act; to authorize the
18 establishment of Certificate conditions issued pursuant to
19 this Act; to require certain documents to accompany
20 Certificate applications; to provide that certain conditions
21 be met prior to the issuance of Certificates for the
22 Operation of Dams in existence or being constructed as of the
23 effective date of the Rules and Regulations; to authorize

1 contracts; to provide for the revocation, suspension or
2 modification of Certificates; to provide a procedure for
3 Abandonment, Breach or Removal of Dams; to authorize the
4 issuance of administrative orders to Owners of Dams when such
5 Dams are not in compliance with this Act or the Rules and
6 Regulations; to authorize Emergency action by the State with
7 regard to Dams that are an immediate threat to human life or
8 property; to provide for rights of investigation, entry,
9 access and inspection; to provide for administrative and
10 judicial review; to provide for the powers and duties of the
11 Agency; to provide for the powers and duties of the Director;
12 to provide that a violation of this Act shall constitute a
13 misdemeanor; to provide for civil penalties for a violation
14 of this Act or any Certificate or administrative order issued
15 pursuant to this Act; to provide a procedure for imposing
16 civil penalties; to provide for injunctive relief; to provide
17 for severability; to provide for an effective date; to repeal
18 conflicting laws; and for other purposes.

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23

1 **BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:**

2

3 **00-00-01. Short title.**

4

5 This Act shall be known and may be cited as the "Alabama
6 Dam Security and Safety Act of 2003."

7

8 **00-00-02. Declaration of purpose.**

9

10 It is the purpose of this Act to provide for the inspection
11 and certification of certain Dams in order to protect the
12 health, safety, and welfare of all the citizens of the State.
13 The inspection and certification of certain Dams is properly
14 a matter for regulation under the police powers of the State.

15

16 **00-00-03. Definitions.**

17

18 As used in this Act, the term:

19

20 (1) "Abandon" or "Abandonment" means to render a Dam non-
21 impounding by dewatering and filling the reservoir created by
22 that Dam with solid materials.

23

1 (2) "Adverse Consequences" means negative impacts that may
2 occur upstream, downstream, or at locations remote from the
3 Dam as a direct and proximate result of the existence or
4 operation of such Dam. The primary concerns are loss of
5 human life, loss of critical infrastructure, property damage
6 and lifeline disruption.

7

8 (3) "Agency" means the Office of Water Resources, a division
9 of the Alabama Department of Economic and Community Affairs
10 or its successor.

11

12 (4) "Alterations" or "Repairs" means Alterations,
13 modifications, or Repairs to existing Dam and Appurtenant
14 Works as may directly affect the safety of the Dam or
15 Reservoir, as determined by the Agency.

16

17 (5) "Approval" means authorization in writing issued by the
18 Director to an Owner who has applied to the Agency for
19 permission to Construct, Reconstruct, Enlarge, Repair, alter,
20 modify, Remove, maintain, Operate or Abandon a Dam and which
21 specifies the conditions or limitations under which work is
22 to be performed by the Owner or under which approval is
23 granted.

1 (6) "Appurtenant Works" include, but are not limited to, such
2 structures as spillways, either in the Dam or separate
3 therefrom; the Reservoir and its rim; low-level outlet works;
4 and liquid conduits such as tunnels, pipelines or penstocks,
5 either through the Dam or its abutments.

6

7 (7) "Breach" means partial Removal of a Dam, creating a
8 channel through the Dam.

9

10 (8) "Certificate" means a written authorization to Construct
11 and/or Operate a Dam issued by the Director.

12

13 (9) "Construct" or "Construction" means the design,
14 building, Alteration, or Reconstructing of any Dams, together
15 with Appurtenant Works, for the Impoundment or diversion of
16 water or liquid substances and shall include any activity
17 which, other than routinely as part of an approved
18 maintenance program, Repairs or restores the Dam, or Alters
19 its design, shape, or structural characteristics, and shall
20 also include any Enlargement of such.

21

22 (10) "Critical Infrastructure" means systems and assets
23 associated with or impacted by dams or impoundments, whether

1 physical or virtual, so vital to Alabama that the incapacity
2 or destruction of such systems and assets would have a
3 debilitating impact on security, economic stability, public
4 health or safety, or any combination of those matters,
5 consistent with the "Critical Infrastructures Protection Act
6 of 2001."

7

8 (11) "Dam" shall mean any artificial barrier, including
9 Appurtenant Works, which impounds or diverts water,
10 wastewater, or liquid borne materials and which:

11 a. Has an impounding capacity at Maximum Water
12 Storage Elevation of at least 50 acre-feet; or

13

14 b. Is 25 feet or more in height; or

15

16 c. Will create a Probable Loss of Human Life in the
17 event of failure or improper operation, regardless
18 of height or storage capacity; or

19

20 d. Will create a Probable Loss of Critical
21 Infrastructure in the event of failure or improper
22 operation, regardless of height or storage
23 capacity.

1

2 (12) "Dam Safety Program" means the program established by
3 the Agency, pursuant to this Act.

4

5 (13) "Days" used in establishing deadlines, means calendar
6 Days, including Saturdays, Sundays, and Holidays.

7

8 (14) "Director" means the Director of the Office of Water
9 Resources or his/her designee. The Director of the Office of
10 Water Resources or designee must be an Engineer. In
11 addition, the Director of the Office of Water Resources must
12 have a current license to practice engineering in the State
13 of Alabama.

14

15 (15) "Emergency" includes, but is not limited to, Breaches
16 and all conditions leading to or causing a Breach,
17 overtopping, or any other condition in a Dam and its
18 Appurtenant Works that may be construed as unsafe or
19 threatening to human life or Critical Infrastructure;

20

21 (16) "Emergency Action Plan" means the plan to determine when
22 an Emergency with the Dam exists and what to do to prevent or

1 mitigate the consequences of a failure to protect against
2 Probable Loss of Human Life and/or Critical Infrastructure.

3

4 (17) "Engineer" means a qualified professional Engineer. The
5 term "qualified professional Engineer" as used in this Act is
6 intended to mean an individual who has a background in civil
7 engineering and;

8

9 a. Is a licensed professional Engineer in the
10 State; and

11

12 b. Is competent in areas related to Dam
13 investigation, design, Construction, and Operation
14 for the type of Dam being investigated, designed,
15 Constructed or Operated; and

16

17 c. Has at least seven (7) years of relevant
18 experience in areas such as investigation, design,
19 Construction, Reconstruction, Enlargement, Repair,
20 Alteration, maintenance, Operation, Breach, Removal
21 or Abandonment of Dams; and

22

1 d. Understands adverse Dam incidents, failures and
2 the potential causes and consequences of failures;
3 or

4
5 e. Is the State Conservation Engineer of the
6 Natural Resources Conservation Service.

7
8 (18) "Enlarge" or "Enlargement" means any change in or
9 addition to an existing Dam or Impoundment, which raises or
10 may raise the Maximum Water Storage Elevation of the liquid
11 impounded by the Dam or Reservoir.

12
13 (19) "Hazard Potential" means possible Adverse Consequences
14 that result from the release of water or stored contents due
15 to failure or improper Operation of the Dam or Appurtenant
16 Works. The Hazard Potential classification of a Dam does not
17 reflect in any way on the current condition of the Dam and
18 its Appurtenant Works (e.g. safety, structural integrity,
19 flood routing capacity).

20
21 (20) "Height" means the distance from the natural bed of the
22 Impoundment, stream or watercourse measured at the downstream
23 toe of the Dam to the Maximum Water Storage Elevation or

1 means the distance from the lowest elevation of the outside
2 limit of the Dam, if the Dam is not across a stream channel
3 or watercourse, to the Maximum Water Storage Elevation.

4

5 (21) "High Hazard Potential Dam" means a Dam assigned the
6 high Hazard Potential classification where failure or mis-
7 Operation will cause Probable Loss of Human Life.

8

9 (22) "Local Unit of Government" means any political
10 subdivision of this state including, but not limited to, a
11 county, city, town, or municipality, if the political
12 subdivision provides local government services in a
13 geographically limited area of this state as its primary
14 purpose and it has the power to act primarily on behalf of
15 that area.

16

17 (23) "Low Hazard Potential Dam" means a Dam not assigned the
18 Moderate or High Hazard Potential classification.

19

20 (24) "Maximum Water Storage Elevation" means the elevation of
21 the top of the Dam.

22

23 (25) "Moderate Hazard Potential Dam" means a Dam assigned the

1 Moderate Hazard Potential classification where failure or
2 improper Operation results in no Probable Loss of Human Life
3 but will cause Probable Loss of Critical Infrastructure.

4

5 (26) "Operate" or "Operation" means to take actions to
6 control the Impoundment or diversion of a liquid substance by
7 a Dam.

8

9 (27) "Owner" means any Person who owns, controls, Operates,
10 maintains, manages, or proposes to Construct, Reconstruct,
11 Enlarge, Repair, Alter, Remove or Abandon a Dam or Reservoir.

12

13 (28) "Person" means any and all Persons, natural or
14 artificial, including any individual, entity, firm,
15 association, organization, partnership, business, trust,
16 corporation, company, any federal agency, authority, or
17 corporation created by the United States of America, and the
18 State and all political subdivisions, regions, districts,
19 municipalities, counties, and public agencies thereof.

20

21 (29) "Probable Loss of Critical Infrastructure" means that
22 the loss of critical infrastructure will likely occur, is

1 reasonably expected to occur, or is realistic as a result of
2 any action or inaction.

3

4 (30) "Probable Loss of Human Life" means that the loss of
5 human life will likely occur, is reasonably expected to
6 occur, or is realistic as a result of any action or inaction.

7

8 (31) "Reconstruction" means Removal and replacement of an
9 existing Dam.

10

11 (32) "Remove" or "Removal" means complete elimination of the
12 Dam embankment and/or Appurtenant Works.

13

14 (33) "Reservoir" or "Impoundment" means any basin, which
15 contains or will contain impounded water, wastewater, or
16 liquid-borne materials by virtue of its having been impounded
17 by a Dam.

18

19 (34) "Responsible Authority" means those state, county, city
20 or other offices that are charged with maintaining public
21 safety and that are listed in any Emergency Action Plan
22 required by this Act or the Rules and Regulations.

23

1 (35) "Rules and Regulations" means the most recent policies,
2 requirements, regulations, rules or standards adopted by the
3 Agency pursuant to the provisions of the Alabama
4 Administrative Procedure Act, Chapter 22, Title 41, as
5 amended, in order to enforce this Act.

6

7 (36) "State" means the State of Alabama.

8

9 (37) "Surface Mining Act" means Chapter 16, Title 9 of the
10 Code of Alabama, as amended.

11

12 (38) "Water Storage Capacity" means the maximum volume of
13 liquid, which can be stored by the Dam or Reservoir.

14

15 **00-00-04. General Provisions.**

16

17 It shall be unlawful for any Person to Own, Construct,
18 Operate, Abandon, Breach or Remove a Dam that is subject to
19 this Act except in conformance with this Act, Rules and
20 Regulations and administrative orders established and issued
21 under this Act.

22

23

1 **00-00-05. Duties and Authorities.**

2

3 (1) In addition to any other powers and duties provided
4 for in this Act, the Director shall have and may exercise the
5 following powers and duties:

6

7 a. To exercise general supervision over the
8 administration and enforcement of this Act and the
9 Rules and Regulations;

10

11 b. The authority to advise, consult, cooperate,
12 contract, and enter into cooperative agreements
13 with Persons, Local Units of Government, and other
14 governmental agencies or committees, including, but
15 not limited to, the State Soil and Water
16 Conservation Committee, the Alabama Department of
17 Environmental Management, the Natural Resources
18 Conservation Service, the Alabama Department of
19 Transportation, the Alabama Association of
20 Conservation Districts, or the United States Army
21 Corps of Engineers for the purposes of carrying out
22 this Act;

23

1 c. To take such other actions as may be necessary
2 to carry out this Act;

3
4 d. To approve or deny the Impoundment of a liquid
5 substance by a High Hazard Potential Dam, pursuant
6 to this Act and the Rules and Regulations;

7
8 e. To issue Certificates for the Construction and
9 Operation of Dams;

10
11 f. To issue Approvals for and specify conditions
12 under which Dams may be Abandoned, Breached or
13 Removed;

14
15 g. To specify conditions under which any employee
16 of the Agency or its agents may enter upon lands of
17 Owners of Dams;

18
19 h. To require information or written reports from
20 the Owner for the purpose of complying with this
21 Act;

1 i. To direct, conduct and supervise
2 investigations, as the Director may deem necessary
3 to carry out the Director's duties as prescribed in
4 this section;

5
6 j. Upon request of the governing authority of a
7 Local Unit of Government to provide technical
8 assistance to that Local Unit of Government
9 relative to Dams within their jurisdiction. The
10 assistance may include, but shall not be limited to
11 visual inspections, written reports on any
12 structural inadequacies discovered during
13 inspections, written descriptions of the potential
14 Dam failure flood plain, technical advice on
15 procedures to correct structural inadequacies, and
16 assistance in the development of Dam safety
17 ordinances;

18
19 k. To impose conditions upon the issuance of any
20 Certificate to ensure compliance with this Act and
21 the Rules and Regulations and may require the
22 submission of plans, specifications and other
23 information as may be deemed necessary prior to the

1 issuance of a Certificate or the Construction and
2 Operation of a Dam;

3
4 1. To require the submission of documentation,
5 such as plans, specifications, drawings, and other
6 information as the Director may deem necessary by
7 the Engineer who undertakes the design of a Dam to
8 be Constructed after the effective date of this
9 Act; and

10
11 m. To issue administrative orders to Owners of
12 Dams when such Dams are not in compliance with this
13 Act or the Rules and Regulations.

14
15 (2) In the performance of its duties, the Agency shall:

16
17 a. Establish by rules and regulations such
18 policies, requirements, conditions or standards
19 governing the design, Construction, Operation,
20 maintenance, Abandonment, Breach and Removal of
21 Dams which are Certified or required to be
22 Certified under this Act, including, but not
23 limited to, the following:

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- i. Establish by Rules and Regulations requirements for record retention by Dam Owners.
- ii. Establish by Rules and Regulations the minimum criteria for the hydrologic, hydraulic and other design requirements of High Hazard Potential Dams.
- b. Establish by rules or regulations the criteria to be included in Dam application forms;
- c. Establish by rules or regulations the standards to govern inspection of Dams;
- d. Direct and conduct investigations regarding Construction, Reconstruction, Enlargement, Alteration, Repair, Operation, Abandonment, Breach, or Removal of any Dam as the Agency may reasonably deem necessary to carry out its duties as prescribed in this Act and Rules and Regulations. Provided, however, any proprietary or confidential information concerning business activities

1 collected by the Agency will solely be utilized for
2 the purposes of this Act and will not be
3 distributed to the public.

4
5 e. Establish by rules and regulations the criteria
6 for the establishment and assessment of fees
7 associated with this Act, if necessary;

8
9 f. Establish by rules or regulations the standards
10 for an Emergency Action Plan for Dams;

11
12 g. Adopt, modify, repeal, and promulgate other
13 rules or regulations as are necessary and proper to
14 carry out the purposes of this Act and other
15 applicable provisions of the Code of Alabama;

16
17 h. Establish by rules or regulations the criteria
18 by which the Agency will take Emergency action,
19 when necessary;

20
21 i. Apply for, accept, and disburse advances, loans,
22 grants, contributions, and any other form of
23 assistance from the federal government, the state

1 or other public body, or from any sources, public
2 or private, for the purposes of this Act, and enter
3 into and carry out contracts or agreements in
4 connection therewith, and include in any contract
5 for financial assistance with the federal
6 government such conditions imposed pursuant to
7 federal laws as deemed reasonable and appropriate
8 and which are not inconsistent with the purposes of
9 this Act;

10
11 j. Develop Rules and Regulations for the
12 disbursement of funds to Owners to bring their Dams
13 into compliance with this Act and Rules and
14 Regulations;

15
16 k. Report required Dam information to the National
17 Performance of Dams Programs; and

18
19 l. Report inventory and other necessary information
20 to the National Inventory of Dams as requested.

1 **00-00-06. Inventory and classification.**

2

3 (1) It shall be the duty of the Agency to inventory the Dams
4 in the state and to classify each Dam into one of the
5 following categories:

- 6 a. Low Hazard Potential
- 7 b. Moderate Hazard Potential
- 8 c. High Hazard Potential

9

10 (2) The initial inventory required by this Act shall be
11 completed within five (5) years of the effective date of the
12 Rules and Regulations, unless otherwise extended by the
13 Director. The Agency shall reinventory and reclassify, if
14 necessary, the Dams in the State at least once every five (5)
15 years after the completion of the initial inventory.

16

17 (3) The following Low Hazard Potential Dams are not required
18 to be included in the inventory of Dams maintained pursuant
19 to this Act:

20

- 21 a. Any Dam which is less than six (6) feet in height,
22 regardless of its storage capacity; or

23

1 b. Any Dam which has an impounding storage capacity at
2 Maximum Water Storage Elevation of less than 15 acre
3 feet, regardless of its height.

4

5 (4) The Agency is authorized to use information
6 furnished to the Agency by other Persons, to accomplish the
7 purposes of this section, including, but not limited to, the
8 classification of Dams as set forth in subsection (a) of this
9 section.

10

11 **00-00-07. Certificate, Application and Notification**

12

13 (1) Construction, Reconstruction, Enlargement, Alteration,
14 Repair, Operation, Abandonment, Breach, or Removal of High
15 Hazard Potential Dams and the supervision of Construction
16 shall be under the supervision and charge of an Engineer;

17

18 (2) Prior to Construction of a Dam, the Owner shall provide
19 to the Agency the names and addresses of the Person(s) owning
20 the Dam and the Person(s) having direct responsibility for
21 the Operation of the Dam.

22

1 (3) The Owner shall record the location of the Dam on the
2 official land plat for the county or counties in which the
3 Moderate or High Hazard Potential Dam is located;

4

5 (4) The Engineer who undertakes the design of a High Hazard
6 Potential Dam to be Constructed after the effective date of
7 the Act must submit to the Director documentation, such as
8 plans, specifications, drawings, and other information as
9 required by the Rules and Regulations.

10

11 (5) The supervising Engineer of a Dam Construction project
12 shall submit progress reports as required by the Rules and
13 Regulations;

14

15 (6) Any Owner, unless otherwise exempt by this Act, who
16 desires to Construct a Dam for the purpose of impounding or
17 diverting liquid, but has not commenced the Construction as
18 of the effective date of the Rules and Regulations, shall do
19 the following:

20

21 a. Request of the Agency, and the Agency shall
22 furnish the Person with, based on information
23 provided to the Agency by the requestor, an initial

1 opinion as to whether the proposed Dam, if
2 Constructed, would be classified as a Low, Moderate
3 or High Hazard Potential Dam for the purposes of
4 this Act.

5
6 b. Submit a Certificate application to the Agency.

7
8 (7) Any Owner who is operating a existing Dam prior to the
9 effective date of the Rules and Regulations or who is in the
10 physical process of constructing a Dam as of the effective
11 date of the Rules and Regulations, shall do the following:

12
13 a. Request of the Agency, and the Agency shall
14 furnish the Person with, based on information
15 provided to the Agency by the requestor, an
16 initial opinion as to whether the Dam would be
17 classified as a Low, Moderate or High Hazard
18 Potential Dam for the purposes of this Act,
19 provided that the Person may continue to Operate
20 or Construct the Dam pending classification by
21 the Agency.

1 b. Submit a Certificate application to the
2 Agency provided that the Owner may continue to
3 Operate or Construct the Dam pending final
4 action by the Agency on the application for a
5 Certificate; Certificates issued for the
6 Construction of Dams pursuant to this section
7 shall also authorize the Operation of the Dams
8 Constructed in accordance with the Certificate.

9

10 (8) If the Agency reclassifies a Dam because of either
11 alterations in the Dam or changed circumstances that would
12 modify the classification of the Dam, the Agency shall give
13 notice to the Owner as to the determination regarding the
14 reclassification of the Dam and issue a revised Certificate
15 outlining the requirements of the new classification.

16

17 (9) Certificate applications for the Construction of a High
18 Hazard Potential Dam shall be accompanied by certification
19 from an Engineer stating that he/she is responsible for the
20 design of the Dam and that the design meets all standards
21 established by the Agency in the Rules and Regulations. As
22 an alternative to a certificate from an Engineer, the Agency
23 may accept a Certificate application accompanied by a

1 certificate from the State Conservation Engineer of the
2 United States Natural Resources Conservation Service stating
3 that the design of the Dam meets all standards established by
4 the Agency and the Rules and Regulations.

5

6 (10) If the Director disapproves an application for
7 Construction of a Dam, a copy of the application shall be
8 returned to the applicant with a statement of the reasons for
9 the disapproval. The applicant may reapply for a Certificate
10 after incorporating the changes required by the Director.

11

12 (11) The Director may revoke, suspend, or modify any
13 Certificate issued pursuant to this Act or deny the issuance
14 of a Certificate for cause including, but not limited to, the
15 following:

16

17 a. Violation of any condition of the Certificate;

18

19 b. Obtaining a Certificate by misrepresentation or by
20 failure to disclose fully all material facts;

21

22 c. Violation of any provision of this Act or the Rules
23 and Regulations; or

1
2 d. Change in any condition of the Dam that requires
3 revocation, suspension, or modification of a Certificate
4 in order to ensure compliance with this Act or the Rules
5 and Regulations.

6
7 **00-00-08. Exemptions.**

8
9 (1) Notwithstanding other provisions of this Act, the
10 following Dams shall be exempt from all requirements of this
11 Act except those necessary to maintain the inventory
12 provided herein below:

13 a. Any Dam owned and Operated by any department or
14 agency of the United States government, provided those
15 Dams are regulated in a manner that meets or exceeds the
16 requirements of this Act.

17
18 b. Any Dam licensed by the Federal Energy Regulatory
19 Commission, or for which a license application is
20 pending with the Federal Energy Regulatory Commission;

21
22 c. Any Dam as otherwise defined by this Act shall be
23 exempt from the provisions of this Act for so long as

1 the Dam is regulated and permitted under the Surface
2 Mining Act. However, if the Dam so Constructed is
3 classified by the Director as a High Hazard Potential
4 Dam, the Owner shall, upon the completion of the mining
5 activity in connection with which the Dam was
6 Constructed, either drain and reclaim the Impoundment
7 formed by the Dam pursuant to the mined land use plan
8 approved under the Surface Mining Act or stabilize the
9 Impoundment as a lake pursuant to the mined land use
10 plan and the Rules and Regulations. If the Impoundment
11 is reclaimed as a lake and the Dam which created the
12 Impoundment remains in place as a High Hazard Potential
13 Dam, then, before the lake is deemed to be reclaimed so
14 as to release the Owner from his/her obligations under
15 the Surface Mining Act, the Owner shall certify to the
16 Director and the Owner(s) of the property (ies) on which
17 the High Hazard Potential Dam is located that the High
18 Hazard Potential Dam is in full compliance with the
19 provisions of this Act and the Rules and Regulations.

20
21 d. Any Dam Owner who can show proof that the structure
22 is already required to be regulated may be exempt, upon
23 a determination by the Director that those regulatory

1 requirements meet or exceed the requirements of this Act
2 and the Rules and Regulations.

3

4 (2) Exempt Dams shall be required to submit information to
5 the Agency in accordance with the Rules and Regulations for
6 purposes of maintaining the inventory.

7

8 **00-00-09.Dam Removal.**

9

10 (1) It shall be unlawful for the Owner of any Moderate or
11 High Hazard Potential Dam, to Abandon, Breach or Remove the
12 Dam without the prior written approval of the Director, or as
13 may be provided for under the Rules and Regulations.

14

15 (2) Within sixty (60) Days after the receipt of a completed
16 application for Abandonment, Breach or Removal, the Director
17 shall approve, or approve subject to appropriate conditions,
18 the applicant's request for Abandonment, Breach or Removal.

19

20 (3) The Abandonment, Breach or Removal of a Dam shall follow
21 the requirements set out in the Approval.

22

1 (4) The Director has the authority to request Low Hazard
2 Potential Dam Owners to notify the Agency of the Abandonment,
3 Breach or Removal of any Dam, for the purpose of removing
4 that Dam from the inventory.

5

6 **00-00-10. Inspection of Dams.**

7

8 (1) The Director, or any authorized agency or Contractor, is
9 authorized and shall be permitted by the Owner to make a
10 visual inspection of any and all Dams. After visual
11 inspection, and upon a finding by the Director or the Agency
12 that a Dam is not in compliance with any provision of this
13 Act or the Rules and Regulations, the Director may issue an
14 administrative order to the Owner of the Dam requiring the
15 Owner to undertake, at the Owner's expense, the maintenance,
16 Alterations, Repairs, Reconstruction, change in Construction
17 or location, or Removal as may be deemed necessary by the
18 Director which may include the draining or lowering of the
19 liquid level of the Dam, within the time period specified in
20 the administrative order.

21

22 (2) Based upon a visual inspection of a Moderate or High
23 Hazard Potential Dam, if the Director determines that the Dam

1 is not in compliance with this Act or the Rules and
2 Regulations, and there is not sufficient time to issue an
3 administrative order, the Director may immediately take
4 measures as may be necessary to provide Emergency protection
5 to human life and/or Critical Infrastructure, including
6 lowering the Reservoir level or destroying the Impoundment,
7 in whole or in part. The costs of the Emergency measures may
8 be recovered by the Agency.

9

10 (3) It shall be unlawful for any Person to refuse entry or
11 access to any authorized representative of the Agency who
12 requests entry for purposes of inspection and who presents
13 appropriate identification. It shall also be unlawful to
14 obstruct, hamper, or interfere with any representative while
15 in the process of carrying out his/her official duties
16 pursuant to this Act and the Rules and Regulations.

17

18 (4) This Act shall not be construed as exempting any existing
19 Dam, prior to the issuance of a Certificate authorizing the
20 Operation of the Dam, from compliance with the design
21 standards established pursuant to this Act and the Rules and
22 Regulations. Further, in the event a visual inspection
23 provided for in the Rules and Regulations reveals that

1 distress of the Dam is indicated by various conditions
2 including, but not limited to, lack of adequate maintenance,
3 seepage, surface cracks, settlement, movement, or erosion, or
4 when the inspection indicates that the Dam was not designed
5 or constructed in accordance with the requirements of this
6 Act and the Rules and Regulations, a Certificate may be
7 issued only after the Director has received a detailed
8 engineering study as provided for in this Act. Based upon a
9 review of the study, the Director shall deny the Certificate
10 or issue the Certificate subject to conditions necessary to
11 bring the Dam into compliance with this Act and the Rules and
12 Regulations.

13

14 **00-00-11. Emergency Action Plan.**

15

16 (1) The Owner of a High Hazard Potential Dam shall develop
17 an Emergency Action Plan, that must be approved by the
18 Director and provided to the Agency. The plan shall
19 include, but not be limited to, the notification of the
20 Agency and Responsible Authorities of any conditions which
21 threaten the safety of the High Hazard Potential Dam,
22 including, but not limited to, erosion, surface cracks,
23 seepage, settlement, or movement of the High Hazard

1 Potential Dam and the actions to be taken to protect
2 against loss of human life. A certificate may be issued
3 only after the Director has approved and received Emergency
4 Action Plan.

5
6 (2) The Owner of a Moderate Hazard Potential Dam shall
7 maintain an Emergency Action Plan. The Emergency Action
8 Plan shall be provided to the Agency upon request.

9
10 **00-00-12. Operations and Maintenance.**

11 (1) The Owner of a High Hazard Potential Dam shall develop
12 and implement a plan for operation and maintenance of the
13 High Hazard Potential Dam that must be approved by the
14 Director and provided to the Agency. A certificate may be
15 issued only after the Director has approved and received
16 operation and maintenance plan.

17
18 (2) The Owner of a Moderate Hazard Potential Dam shall
19 develop and implement a plan for operation and maintenance
20 of the Moderate Hazard Potential Dam. The operation and
21 maintenance plan shall be provided to the Agency upon
22 request.

23

1 **00-00-13. Administrative and judicial review.**

2

3 Any Person who is aggrieved or adversely affected by an order
4 or action of the Director or the Agency may seek review of
5 such order or action in accordance with the Alabama
6 Administrative Procedures Act, Chapter 22, Title 41, as
7 amended, in order to enforce this Act.

8

9 **00-00-14. Injunctive relief.**

10

11 Whenever in the judgment of the Director, any Person who has
12 engaged in or is about to engage in any act or practice which
13 constitutes or will constitute an unlawful action under this
14 Act, the Director may make application to the circuit court
15 of the county in which the unlawful act or practice has been
16 or is about to be engaged in, or in which jurisdiction it is
17 appropriate, for an order enjoining the act or practice, or
18 for an order requiring compliance with this Act or the Rules
19 and Regulations. Upon a showing by the Director that the
20 Person has engaged in or is about to engage in any such act
21 or practice, a permanent or temporary injunction, restraining
22 order, or other order shall be granted without the necessity
23 of showing lack of an adequate remedy at law and without the

1 requirement of establishing bond by the circuit court in
2 which the relief is sought.

3

4 **00-00-15. Liability for damages.**

5

6 (1) Nothing in this Act shall be construed to constitute a
7 waiver of the sovereign immunity of the State, or the
8 Agency.

9

10 (2) No action shall be brought against the State, the
11 Agency, the Director or any member, officer, or employee of
12 the State or the Agency for damages sustained through the
13 partial or total failure of any Dam or for any act or
14 responsibility pursuant to this Act, including
15 specifically, but not limited to, any action taken or not
16 taken by the Agency, the Director or the Agency's
17 employees, officers or representatives.

18

19 (3) Nothing in this Act and any order, action, or advice of
20 the Director or the Agency or any representative thereof
21 shall be construed to relieve an Owner of the legal duties,
22 obligations, or liabilities incident to the Ownership or
23 Operation of the Dam.

1

2 **00-00-16. Criminal and civil penalties.**

3

4 (1) Any Person who engages in any action made unlawful by
5 this Act or the Rules and Regulations shall be guilty of a
6 misdemeanor. Each day of continued violation shall
7 constitute a separate offense.

8

9 (2) As an alternative to criminal enforcement pursuant to
10 subsection (1) of this section, the Director may impose civil
11 penalties in accordance with the following provisions:

12

13 a. Any Person violating any provision of this Act or
14 any Certificate condition or limitation established
15 pursuant to this Act or negligently or willfully failing
16 or refusing to comply with any final order of the
17 Director issued as provided in this Act shall be liable
18 for a civil penalty not to exceed \$5000.00 for the
19 violation and an additional civil penalty not to exceed
20 \$1000.00 for each day during which the violation
21 continues;

22

1 b. Whenever the Director has reason to believe that
2 any Person has violated any provision of this Act, the
3 Rules and Regulations, or any Certificate condition or
4 limitation established pursuant to this Act or has
5 negligently or willfully failed or refused to comply
6 with any final order of the Director, the Director may
7 cause a hearing to be conducted before a hearing officer
8 appointed by the Agency. Upon a finding that the Person
9 has violated any provision of this Act, the Rules and
10 Regulations or any Certificate condition or limitation
11 established pursuant to this Act or has negligently or
12 willfully failed or refused to comply with a final
13 administrative order of the Director, the hearing
14 officer shall issue a written decision imposing the
15 civil penalties as are provided in paragraph (1) of this
16 subsection. The hearing and any administrative or
17 judicial review thereof shall be conducted in accordance
18 with applicable Alabama law.

19
20 c. All civil penalties recovered under this section by
21 the Agency or the Attorney General shall be deposited
22 into the State Treasury to the credit of the General
23 Fund, except that portion that represents the reasonable

1 costs incurred by the Agency or the Attorney General to
2 recover such penalties which shall be deposited to the
3 credit of the operating fund of the Agency or the
4 Attorney General, whichever incurred such costs.

5

6 **00-00-17. Severability.**

7

8 The provisions of this Act are severable. If any part of
9 this Act is declared invalid or unconstitutional, that
10 declaration shall not affect the part that remains.

11

12 **00-00-18. Repeal of Provisions in Conflict with this Act.**

13

14 All laws or parts of laws that conflict with this Act are
15 repealed.

16

17 **00-00-19. Effective Date.**

18

19 This Act shall become effective immediately upon its passage
20 and approval by the Governor, or its otherwise becoming law.
21 Any Owner who desires to construct a Dam but who has not
22 commenced such construction as of the effective date of this
23 Act shall be required to comply with this Act and the Rules

1 and Regulations. Any Owner whose Dam is in existence as of
2 the effective date of this Act will be required to comply
3 with this Act and the Rules and Regulations once notification
4 has been given as to the classification of the Dam by the
5 Agency. Owners of High Hazard Potential Dams will have five
6 (5) years after notification to bring those High Hazard
7 Potential Dams into compliance pursuant to this Act.